

IN THE COURT OF APPEALS OF IOWA

No. 3-1060 / 13-0345
Filed January 9, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CORY LEE KLEPPE,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge.

A defendant appeals from his conviction asserting the district court abused its discretion in sentencing him. **AFFIRMED.**

Julie De Vries of De Vries Law Office, Centerville, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Peter Blink, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

Cory Kleppe appeals his sentence following his conviction for two counts of first-degree harassment, in violation of Iowa Code sections 708.7(1) and 708.7(2)(a) (2011). On appeal he claims the court did not state adequate reasons on the record for running his sentences consecutively. He also claims the court erred in accepting testimony at the sentencing hearing from the sister of one of the victims. He asserts counsel was ineffective in failing to object to this testimony. Because we find the court adequately stated the reasons for the imposition of consecutive sentences, the court properly admitted the testimony, and Kleppe suffered no prejudice as a result of counsel's failure to object to the testimony, we affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Kleppe was charged with two counts of first-degree harassment, along with other misdemeanors, after he confronted his ex-girlfriend at her place of employment and threatened to kill her and a coworker, who stepped in to restrain him. Kleppe pled guilty to the two first-degree harassment charges and proceeded to sentencing. One of the victims of the crime submitted a written victim impact statement, which was accepted by the court at sentencing. The State also called as a witness that victim's sister, who testified, without objection, regarding the impact the crime had on the victim. The court ordered Kleppe to serve two years imprisonment on each count to run consecutively to each other and consecutive to any other sentence he was serving.

In pronouncing the sentence the district court stated, in part:

And quite frankly it makes me think that you're extremely dangerous.

You're not only just walking around threatening people, you're fighting with them at this business. Strangers. And it's because of a phone? Threatening to kill strangers. Threatening to kill somebody you had a relationship with. Who I'm—I suppose I'm supposed to accept that it was somebody you cared about. So you threaten to kill strangers, you threaten to kill people you care about over a phone?

I am concerned on a couple of levels there, Mr. Kleppe, because part of your criminal history is an inability to come to terms with controlled substances. And I suspect that from what I've heard and the circumstances of this case and looking at your criminal history and looking at your failure on probation and placements that those substances have reached a point where they've affected your judgment and thinking. That concerns me.

Number two, your anger responses concern me greatly. Number three, I don't think that you have any appreciation whatsoever as to the harm that you've caused to another person. Let alone all the employees where she now has to work. I don't think you have any appreciation whatsoever as to the impact that your conduct has not just on her, but on all of the relationships that she has at work now, because everybody has got to wonder. Is the guy going to come back and take me down and threaten to kill me some more? Everybody has to be afraid of you and that is what you want. Isn't it.

I don't think that we can fix that. And all I can do, in all candor, is to try to deter you. I think that prison sentences on each of these are far warranted not just because of your prior criminal history and your failure on supervision, but because of the circumstances and nature of this offense.

I'm going to run two consecutive prison sentences in this case consecutive to any other sentence you've received. Because I am here to tell you, Mr. Kleppe, I think that you are violent, I think that you are dangerous

In the sentencing order, the court also stated the sentence was imposed after considering the statutory factors and giving special consideration to: "The defendant's prior record and failure on prior probation efforts; nature and circumstances of the case; and the need for deterrence of this offender and others similarly situated."

Kleppe now appeals.

II. SCOPE AND STANDARD OF REVIEW.

“We review the district court’s decision to impose consecutive sentences for abuse of discretion.” *State v. Leckington*, 713 N.W.2d 208, 216 (Iowa 2006). An abuse of discretion will be found only where the court “acts on grounds clearly untenable or to an extent clearly unreasonable.” *Id.*

III. CONSECUTIVE SENTENCES.

Kleppe contends the court erred in failing to articulate on the record the reason for imposing consecutive sentences. A trial court is required by Iowa Rule of Criminal Procedure 2.23(3)(d) to state on the record the reason for selecting a particular sentence; this includes the reasons for selecting consecutive sentences. See *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa 1994). The reasons do not need to be exhaustive and may even be terse and succinct so long as “the brevity of the court’s statement does not prevent review of the exercise of the court’s sentencing discretion.” *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). In addition, the reasons given do not need to be specifically tied to the imposition of the consecutive sentences, but may be found from the expressed purpose of the overall sentencing plan. *Delaney*, 526 N.W.2d at 178.

We find based on the above record that the court gave adequate reasons for imposing consecutive sentences. The court noted Kleppe’s criminal history and history of substance abuse, his inability to comply with probation, the multiple victims of his current crime, his lack of remorse, and his ridiculous

justification for the crime—the victim had a cell phone that belonged to his family. The court was particularly concerned with Kleppe’s violence and dangerousness and the need to deter him from future acts of violence. All of these reasons point to keeping Kleppe in prison for as long as statutorily possible, justifying the imposition of consecutive sentences. We find no abuse of discretion in the district court’s sentencing order.

IV. TESTIMONY OF VICTIM’S SISTER AT SENTENCING.

Next, Kleppe asserts it was improper for the court to accept the testimony from the victim’s sister at the sentencing hearing. Because his attorney did not object to the testimony, he raises this claim as an ineffective-assistance-of-counsel claim. Kleppe claims under section 915.21(1)(e)¹ the victim’s sister could testify only if the victim was unable or unavailable to make a statement. In the present case, the victim submitted a written victim impact statement. Accordingly, the victim was both able and available to make a statement.

We note also that the sister was not a victim under section 915.10(3).² See *State v. Tesch*, 704 N.W.2d 440, 452 (Iowa 2005) (finding the wife of the victim—who had presented his own oral victim impact statement—did not qualify

¹ Iowa Code section 915.21(e), provides: “If the victim is unable to make an oral or written statement because of the victim’s age, or mental, emotional, or physical incapacity, the victim’s attorney or a designated representative shall have the opportunity to make a statement on behalf of the victim.”

² A “victim” is defined in section 915.10(3) to mean:

a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, other than a simple misdemeanor, committed in this state. “Victim” also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

as a victim under section 915.10(3)).³ We also note the testimony of the victim's sister was not a "victim impact statement" under chapter 915. A "victim impact statement" as that term is defined in the code is "a written or oral presentation to the court by the victim or the victim's representative that indicates the physical, emotional, financial, or other effects of the offense on the victim." Iowa Code § 915.10(4). A person giving a victim impact statement is not placed under oath and is not subject to cross-examination. See *id.* § 915.21(3). In contrast, the victim's sister here was called to testify by the State at the sentencing hearing, was placed under oath, answered questions posed by the State, and was subject to cross-examination, although defense counsel had no questions for her. Thus, the victim impact statutes Kleppe argues the court violated when it admitted the testimony of the victim's sister are not applicable.

We conclude district court correctly admitted the testimony of the victim's sister under sections 901.2 and 901.5. Section 901.2 provides:

1. Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources.

The State offered the testimony of the victim's sister on an issue that is relevant to the question of sentencing—the effect the crime had on the victim and her family. In addition, section 901.5 provides the court is to receive and examine all

³ The court in *Tesch* did not address whether the wife's victim impact statement was admissible under sections 901.2 and 901.5.

pertinent information before it considers its sentencing options.⁴ The victim's sister's testimony was part of the pertinent information the court was permitted to consider. Because the information was properly offered and received by the court at sentencing, Kleppe's attorney had no duty to object to its admission. See *State v. Westeen*, 591 N.W.2d 203, 208 (Iowa 1999) ("Counsel is not ineffective when the issue counsel failed to raise has no merit.").

We also conclude Kleppe was not prejudiced by the admission of the victim's sister's testimony, even if it was not properly admitted. See *Tesch*, 704 N.W.2d at 453–54. At sentencing in this case the court admitted a written victim impact statement from the victim, Kleppe's ex-girlfriend. Much of the sister's testimony restated the same information the victim had recorded in her written statement regarding the impact the crime has had on her life. We find the sister's testimony was merely cumulative of the information in the victim's written statement. Because the information was merely cumulative, Kleppe suffered no prejudice as a result of the admission of the sister's testimony, and his ineffective-assistance-of-counsel claim fails on the prejudice prong.

AFFIRMED.

⁴ In *State v. Phillips*, 561 N.W.2d 355, 359 (Iowa 1997), a fourteen-year-old sexual abuse victim and her parents submitted written victim impact statements for inclusion in the presentence investigation report. The victim's father also made an oral statement at the sentencing hearing. Under section 915.10(3) and the predecessor statute in effect at that time, the father was a defined victim. The victim impact statute at that time did not, however, provide for oral statements, only written statements, and the procedures for written statements were included in the statute. Without acknowledging that the victim impact statement statute did not specifically authorize the father's oral statement, the supreme court concluded that the statement was permissible under sections 901.2 and 901.5.